



1 aspects of the case involved in the appeal.” Griggs v. Provident  
2 Consumer Disc. Co., 459 U.S. 56, 58 (1982) (per curiam). Here, the  
3 notice of appeal was filed after the motion for attorney’s fees  
4 (#12) was filed, but before the Court decided the motion for  
5 attorney’s fees (#12).

6 In Masalosalo by Masalosalo v. Stonewall Ins. Co.<sup>1</sup>, the Court  
7 of Appeals for the Ninth Circuit held that an appeal from the merits  
8 does not foreclose an award of attorneys’ fees by the district  
9 court. 718 F.2d 955, 956 (9th Cir. 1983) (citations omitted).  
10 Allowing the district court retain jurisdiction to consider a motion  
11 for attorney’s fees “will prevent hasty consideration of  
12 postjudgment fee motions” and “will prevent postponement of fee  
13 consideration until after the circuit court mandate, when the  
14 relevant circumstances will no longer be fresh in the mind of the  
15 district judge.” Id. The Ninth Circuit also noted that if the  
16 district court rules on the fees motion, the losing party may file  
17 an appeal from the district court’s order on the motion for  
18 attorney’s fees and have that appeal consolidated with the appeal on  
19 the merits. Id.

20 Appellee asks that the Court award attorney’s fees in the  
21 amount of \$3,367.00. Appellee has provided an itemization and  
22 description of the work performed by the attorney, a brief summary  
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25 <sup>1</sup> This decision pre-dates the 1993 amendment to the Federal  
26 Rules, which added the fourteen-day time limit for motions for  
27 attorney’s fees. Federal Rule of Civil Procedure 54 now requires that  
28 a motion for attorney’s fees must be filed no later than fourteen days  
after the entry of judgment.

1 of the fees awarded in the bankruptcy court's order, and a  
2 spreadsheet of the time and labor expended on the appeal.

3 Appellee has set forth no compelling right to attorney's fees  
4 in the appeal from the bankruptcy court. There is no statutory or  
5 contractual authority entitling her to an award of attorney's fees.  
6 Furthermore, Appellee appears to be requesting an amount that  
7 includes fees incurred in the bankruptcy case. Appellee appears to  
8 cite 28 U.S.C. § 1447(c) in support of her argument for fees. That  
9 provision allows fees when a case removed to federal court is  
10 remanded back to state court, and is inapplicable to this case,  
11 which is an appeal from a decision of the bankruptcy court.  
12 Appellee also cites the five-factor balancing test found in Hummel  
13 v. S. E. Rykoff & Co. in support of her motion for fees (#12). 634  
14 F.2d 446, 453 (9th Cir. 1980). This is not a case involving bad  
15 faith or the need for deterrence, and therefore find that Appellee  
16 is not entitled to attorney's fees.

17 Appellee also included her bill of costs in this motion (#12).  
18 The bill of costs would normally be filed separately, but because it  
19 was included, Appellant made his objections in his opposition (#13)  
20 to Appellee's motion (#12). While he acknowledges that Appellee is  
21 the prevailing party and is entitled to costs, he asserts that the  
22 bill of costs attached to Appellee's motion (#12) includes costs for  
23 the motion heard by the bankruptcy court as well as costs incurred  
24 regarding the appeal, which is improper. Furthermore, Appellant  
25 notes that although there is an itemization of the costs, there are  
26 no other supporting documents attached evidencing the costs of  
27 expenses. The bill of costs should have been filed with the Clerk  
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1 of the Court within fourteen days of the judgment. Because Appellee  
2 filed the bill of costs as an attachment to this motion (#12) within  
3 fourteen days of the judgment, we shall grant Appellee additional  
4 time within which to file a proper bill of costs, including any  
5 supporting documentation of requested costs in accordance with Local  
6 Rule 54-1.

7  
8 **IT IS, THEREFORE, HEREBY ORDERED** that Appellee's Motion for  
9 Attorney's Fees (#12) is **DENIED**. Appellee may file a bill of costs  
10 within fourteen (14) days of the date of entry of this Order, and  
11 Appellant may file an objection within fourteen (14) days after  
12 service of the bill of costs.

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14  
15 DATED: November 4, 2011.

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17 UNITED STATES DISTRICT JUDGE